

# Annex C-4: Application of Crouch Harbour Authority



## THE CROUCH HARBOUR AUTHORITY

Rec'd  
17/6/14

✓ Mark Wakelin LLB. MNI  
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[www.crouchharbour.org.uk](http://www.crouchharbour.org.uk)

our ref

date 11<sup>th</sup> June 2014

your ref

Department for Transport

Ports Governance Branch

Zone 1/22

Great Minster House

76 Marsham St.

London

SW1P 4DR

Dear Sirs

**Re: Harbour Directions**

I refer to my email on 2<sup>nd</sup> April 2014 in which I confirmed that I am instructed by Crouch Harbour Authority to apply to the Department for Crouch Harbour Authority to be designated with the power to make Harbour Directions under Sections 40A – 40D of the Harbours Act 1964 as inserted by the Marine Navigation Act 2013.

**Contact Details:**

Crouch Harbour Authority, The Harbour Office, The Quay, Burnham on Crouch, Essex CM0 8AS.

Tel:

Email

### **Rationale:**

The harbour authority's reasons for seeking powers to make Harbour Directions are as follows:

#### **Limited Scope of Existing Powers**

The powers to make Directions given by 1847 Piers Docks and Harbours Clauses Act are very limited and specific and have been found by experience not to be applicable in modern situations. This must be unsurprising given that the nature and use of harbours has changed beyond recognition in nearly 170 years!

#### **Risk Assessments and Managing Hazards/PMSC**

Because Risk Assessment of navigational hazards commonly encountered in the harbour, undertaken pursuant to Port Marine Safety Code, and measures necessary to manage those hazards, require the power to make and enforce Directions which the Harbour Authority does not at present possess.

#### **Increase in Commercial Shipping Movements**

There has in the past two years approximately been a very substantial increase in commercial shipping traffic using the harbour, presently running at approximately 100 ship arrivals per month. It is likely that this traffic will continue and may also diversify from conventional self-propelled ships to the use of large tug and barge combinations which will require amended procedures and standing instructions for safety of navigation.

#### **Increase in Shellfishing/Shellfish Farming Activity**

In the past two to three years there has been a major increase in shellfishing and shellfish farming activity, notably dredging for Clams, farming of Oysters and laying/fattening of Mussels, which is leading to conflicts between commercial fishermen/fishing vessels and with recreational users which the harbour authority is presently not empowered to manage effectively. Examples include fishing/dredging for shellfish through established yacht mooring areas, poaching by unlicensed fishermen using over-sized vessels of shellfish stocks from grounds lawfully tenanted and sustainably operated by other fishermen, uncontrolled noise and disturbance from fishing vessels to on-shore residents and persons staying on moored yachts, poor watchkeeping and lookout by fishing vessels operating underway, unauthorised installation

of marker buoys or beacons marking shellfish beds which may represent a hazard to navigation and the use of elevators and non-traditional fishing methods on large fishing vessels which are believed to be causing serious environmental damage in waters which are recently designated MCZs and SPA or SAC. Some of these matters are amenable to management by the making of Harbour Directions

### **Disturbance, Risk to Persons and Environmental Damage by Fast Powerboats**

There is increasing dissatisfaction among recreational boat users and yachtsmen, and also among riparian landowners and conservation organisations including RSPB and Environment Agency at the levels of noise and disturbance, the risk to persons and the damage to flood defences and natural habitats caused by the increased usage of fast powered boats, including in particular large fast cabined power boats, in the rivers in circumstances where the existing Crouch Harbour Speed Limit Byelaws either do not apply or are of limited effect. The power to introduce amended speed limits by Harbour Direction after appropriate consultation is considered essential.

### **Management of Unauthorised and Potentially Dangerous Events**

The Harbour Authority's existing powers have been found to be completely inadequate to manage or control unauthorised events being held on the river, such as 'Poker Runs' (unauthorised impromptu races by large numbers of power boats organised covertly and unaccountably using social media and carried out without regard to the safety of other river users, without even basic safety and insurance provision, in direct and intentional conflict with established and properly organised regattas). It is essential to be able to close this lacuna in the Authority's powers before a serious tragedy occurs.

### **Overhaul of Existing Permissions/ Licensing Provisions**

The powers given to the Authority by Crouch Harbour Act 1974 to license/permit certain activities and penalties for infringement are now seen to be insufficient viz: Use and mooring of Houseboats/Residential Vessels; Licensing of Moorings; Works and Dredging Licences; Licensing of small passenger vessels/operators; Tugs/towing vessels etc. In some cases it is merely the level of fines for breach of the Act at typically £50 per offence which make these provisions effectively worthless/inoperative. In other cases, notably the definition of 'houseboat' in the Act, it is the substance/drafting of the Act which needs remedy. Similarly the specified penalty on judgement for non-payment of Harbour Dues at 'Three times the sum unpaid' is insufficient deterrent to a hard core of reluctant payers given our historically very low level of dues. Some of these matters might be addressed by appropriate partial repeals and

replacement with Directions, others might require more fundamental revision, but the matter becomes academic unless the Authority is designated with the power to make Directions.

### **Amendment and Repeal of Local Statutes / Byelaws**

It follows from the foregoing that there may well be significant numbers of amendments/repeals necessary to provisions within Crouch Harbour Act 1974 and Crouch Harbour Byelaws 1978 as amended.

Whether particular problems can properly be addressed by repeal of all or parts of the 1974 Act or byelaws is a specialised question on which the authority will need to take appropriate legal advice.

It is not possible to say in detail at this stage what measures may be put forward as the subject of Harbour Directions. Some, notably any significant revisions to the existing river speed limit regime, will undoubtedly be controversial and may encounter significant opposition. It will be necessary to thoroughly assess relevant options and to undertake valid research in order that any changes will be based in good science and will properly reconcile commercial and recreational interests with the Authority's duties towards navigational safety and protection of the environment, bearing always in mind the many different environmental designations applicable to many parts of the harbour..

The Authority is however committed to promoting any changes only after full and inclusive consultation with all stakeholders including but not limited to those represented on the Port User Group and also those specified in Crouch Harbour Act as entitled to nominate members to the statutory Crouch Harbour Advisory Committee.

### **Suitability of Crouch Harbour Authority for Designation with Harbour Direction Powers**

Crouch Harbour Authority is the only authority with relevant powers and duties towards Rivers Crouch and Roach. It is a Trust Port which manages its assets and affairs on a 'not for profit' basis in the interests of its stakeholders. It makes no distributions of profits or dividends of any kind. Its members are constituted in accordance with Crouch Harbour Revision Order 2007 and serve on a voluntary basis without payment. It is the Competent Harbour Authority pursuant to Pilotage Act 1987. Being an independent statutory harbour authority which receives no subsidy or support from public funds, it must defray its expenses from rents on its extensive areas of owned river bed and by charging harbour dues, but it has consistently over decades so

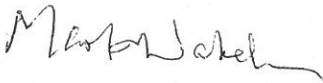
conservatively managed its affairs that the dues charged to recreational boatowners and the charges for moorings on authority owned land are among the very lowest in the country, a fact of which we are proud..

Crouch Harbour Authority is atypical of small harbour authorities only in that its statute, Crouch Harbour Act 1974, formally establishes a consultative body, Crouch Advisory Committee and specifies the matters on which the Harbour Authority must consult the Advisory Committee before making any decision. The Act also specifies the wide range of user and interest groups who are entitled to nominate members to the 27-strong Advisory Committee. The full list of nominating bodies and their current nominees is appended hereto. The Advisory Committee meets actively three times each year under an independent chairman. Its meetings are serviced and minuted by the authority's Harbour Master and staff.

It was initially intended to combine the functions of the Port User Group (PUG) with the Advisory Committee and to combine their meetings. On reflection however it is felt that while there is an overlap between some PUG members and some Advisory Members, the functions of the PUG will be specifically focussed on the Harbour Directions process and that it may not be appropriate to involve some Advisory Committee members in this process. Accordingly it has been decided that PUG will meet separately and independent of Advisory Committee, although all potential Harbour Directions will be referred to and considered by Advisory Committee before they are published.

Advisory Committee has been consulted on the Authority's intention to apply for Harbour Direction powers and is strongly supportive of the need to obtain such powers to address deficiencies in the Authority's present powers, as outlined above.

Yours faithfully



Mark Wakelin

Ch. Exec.

Enc: Contact List



## THE CROUCH HARBOUR AUTHORITY

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our ref

date

2<sup>nd</sup> April 2014

Secretary of State for Transport

Dept. for Transport

Dear Sirs,

Crouch Harbour Authority seeks to obtain the powers necessary to make Harbour Directions as provided in Marine Navigation Act 2013.

I confirm that the following resolutions of the Crouch Harbour Authority were duly passed at a meeting of the Crouch Harbour Authority on Monday 17<sup>th</sup> March 2014.

The harbour authority has had regard to the content of and agrees to comply with the Code of Conduct on Harbour Directions, in particular:

- a) To maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the Code of Conduct when required; and
- b) To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of Harbour Directions.

The Chief Executive is authorised to apply to the Secretary of State for Transport for Crouch harbour Authority to be designated as a harbour authority for the purposes of section 40A of the Harbour Act 1964.

Yours faithfully

Mark Wakelin

Ch. Exec.